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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT

JEAN RIKER,)	Case No. C 08-01547 RMW
)	
Plaintiff,)	ANSWER OF IL FORNAIO TO
)	COMPLAINT
v.)	
)	
SAINTE CLARE HOTEL, LLC,)	
LARKSPUR HOTELS, LLC;)	
IL FORNAIO (AMERICA) CORPORATION;)	
and DOES 1 - 25, Inclusive,)	
)	
Defendants.)	

Defendant Il Fornaio (America) Corporation answers the complaint of plaintiff
Jean Riker as follows:

ANSWER TO FIRST CLAIM FOR RELIEF

(Denial of full and equal access to a public accommodation)

1. In answering paragraph 1 of the complaint, defendant lacks sufficient
knowledge or information as to these allegations and therefore denies each and every allegation
contained therein.

2. In answering paragraph 2 of the complaint, defendant lacks sufficient
knowledge or information as to these allegations and therefore denies each and every allegation
contained therein.

3. In answering paragraph 3 of the complaint, defendant lacks sufficient

1 knowledge or information as to these allegations and therefore denies each and every allegation
2 contained therein.

3 4. In answering paragraph 4 of the complaint, defendant admits the
4 allegations contained therein.

5 5. In answering paragraph 5 of the complaint, defendant admits the
6 allegations contained therein.

7 6. In answering paragraph 6 of the complaint, defendant lacks sufficient
8 knowledge or information as to these allegations and therefore denies each and every allegation
9 contained therein.

10 7. In answering paragraph 7 of the complaint, defendant lacks sufficient
11 knowledge or information as to these allegations and therefore denies each and every allegation
12 contained therein.

13 8. In answering paragraph 8 of the complaint, defendant lacks sufficient
14 knowledge or information as to these allegations and therefore denies each and every allegation
15 contained therein.

16 9. In answering paragraph 9 of the complaint, defendant lacks sufficient
17 knowledge or information as to these allegations and therefore denies each and every allegation
18 contained therein.

19 10. In answering paragraph 10 of the complaint, and to the extent an answer is
20 required, defendant lacks sufficient knowledge or information as to these allegations and
21 therefore denies each and every allegation contained therein.

22 11. In answering paragraph 11 of the complaint, defendant lacks sufficient
23 knowledge or information as to these allegations and therefore denies each and every allegation
24 contained therein.

25 12. In answering paragraph 12 of the complaint, defendant lacks sufficient
26 knowledge or information as to these allegations and therefore denies each and every allegation
27 contained therein.

28 13. In answering paragraph 13 of the complaint, defendant lacks sufficient

1 knowledge or information as to these allegations and therefore denies each and every allegation
2 contained therein.

3 14. In answering paragraph 14 of the complaint, defendant lacks sufficient
4 knowledge or information as to these allegations and therefore denies each and every allegation
5 contained therein.

6 15. In answering paragraph 15 of the complaint, defendant lacks sufficient
7 knowledge or information as to these allegations and therefore denies each and every allegation
8 contained therein.

9 16. In answering paragraph 16 of the complaint, defendant lacks sufficient
10 knowledge or information as to these allegations and therefore denies each and every allegation
11 contained therein.

12 17. In answering paragraph 17 of the complaint, defendant lacks sufficient
13 knowledge or information as to these allegations and therefore denies each and every allegation
14 contained therein.

15 18. In answering paragraph 18 of the complaint, defendant lacks sufficient
16 knowledge or information as to these allegations and therefore denies each and every allegation
17 contained therein.

18 19. In answering paragraph 19 of the complaint, defendant lacks sufficient
19 knowledge or information as to these allegations and therefore denies each and every allegation
20 contained therein.

21 **ANSWER TO SECOND CLAIM FOR RELIEF**

22 **(Violation of the Americans with Disabilities Act of 1990)**

23 20. In answering paragraph 20 of the complaint, defendant incorporates its
24 answers to paragraph 1 through 19 as though fully set forth herein.

25 21. In answering paragraph 21 of the complaint, defendant lacks sufficient
26 knowledge or information as to these allegations and therefore denies each and every allegation
27 contained therein.

28 22. In answering paragraph 22 of the complaint, defendant lacks sufficient

1 knowledge or information as to these allegations and therefore denies each and every allegation
2 contained therein.

3 23. In answering paragraph 23 of the complaint, defendant lacks sufficient
4 knowledge or information as to these allegations and therefore denies each and every allegation
5 contained therein.

6 24. In answering paragraph 24 of the complaint, defendant lacks sufficient
7 knowledge or information as to these allegations and therefore denies each and every allegation
8 contained therein.

9 25. In answering paragraph 25 of the complaint, defendant lacks sufficient
10 knowledge or information as to these allegations and therefore denies each and every allegation
11 contained therein.

12 26. In answering paragraph 26 of the complaint, defendant lacks sufficient
13 knowledge or information as to these allegations and therefore denies each and every allegation
14 contained therein.

15 27. In answering paragraph 27 of the complaint, defendant lacks sufficient
16 knowledge or information as to these allegations and therefore denies each and every allegation
17 contained therein.

18 28. In answering paragraph 28 of the complaint, defendant lacks sufficient
19 knowledge or information as to these allegations and therefore denies each and every allegation
20 contained therein.

21 29. In answering paragraph 29 of the complaint, defendant lacks sufficient
22 knowledge or information as to these allegations and therefore denies each and every allegation
23 contained therein.

24 **AFFIRMATIVE DEFENSES**

25 30. **AS AND FOR A FIRST, SEPARATE AND AFFIRMATIVE**
26 **DEFENSE**, this answering defendant alleges plaintiff is barred from recovery under its
27 complaint and the causes of action therein as it fails to state facts sufficient to constitute a cause
28 of action against this answering defendant.

1 31. **AS AND FOR A SECOND, SEPARATE AND AFFIRMATIVE**
 2 **DEFENSE**, this answering defendant alleges that plaintiff is barred from recovery under its
 3 complaint by its bad faith.

4 32. **AS AND FOR A THIRD, SEPARATE AND AFFIRMATIVE**
 5 **DEFENSE**, this answering defendant alleges that plaintiff is partially and/or fully culpable for
 6 the alleged damages included in the complaint and the causes of action therein and is thus barred
 7 by the doctrine of unclean hands.

8 33. **AS AND FOR A FOURTH, SEPARATE AND AFFIRMATIVE**
 9 **DEFENSE**, this answering defendant alleges that plaintiff omitted to act and/or delayed in
 10 asserting any rights for an appreciable period and defendant would be prejudiced if the assertions
 11 included in the complaint and the causes of action therein, are now permitted. Plaintiff should
 12 thus be barred by the doctrine of laches from asserting the claims set forth in the complaint.

13 34. **AS AND FOR AN FIFTH, SEPARATE AND AFFIRMATIVE**
 14 **DEFENSE**, this answering defendant alleges that plaintiff has omitted to act and/or delayed in
 15 asserting any rights for an appreciable period and thus plaintiff is thus barred by the doctrine of
 16 waiver from asserting the claims set forth in the complaint and the causes of action therein.

17 35. **AS AND FOR A SIXTH, SEPARATE AND AFFIRMATIVE**
 18 **DEFENSE**, this answering defendant alleges that the complaint and the causes of action therein
 19 are barred by the statute of limitations, Code of Civil Procedure Sections 337 among others.

20 36. **AS AND FOR A SEVENTH, SEPARATE AND AFFIRMATIVE**
 21 **DEFENSE**, this answering defendant alleges that plaintiffs was well aware of the facts and
 22 circumstances leading to their alleged damages and that plaintiff took no action to inform
 23 defendant of said facts and consequences. plaintiff is thus barred by the doctrine of estoppel
 24 from asserting the claims set forth in the complaint or from asserting any claim for damages or
 25 seeking any other relief against these defendant.

26 37. **AS AND FOR AN EIGHTH, SEPARATE AND AFFIRMATIVE**
 27 **DEFENSE**, this answering defendant alleges that plaintiff failed to mitigate, minimize or avoid
 28 damages allegedly caused by defendant, and plaintiff is therefore entitled to have any sum to

1 which plaintiff is entitled reduced by such sums as would have been mitigated, minimized or
2 avoided.

3 38. **AS AND FOR A NINTH, SEPARATE AND AFFIRMATIVE**
4 **DEFENSE**, this answering defendant alleges that in the event it is held liable to plaintiff, which
5 liability is expressly denied, and any Doe defendant is likewise held liable, this answering
6 defendant is entitled to a percentage contribution of the total liability from such Doe defendant(s)
7 in accordance with the principles of legal and equitable indemnity and comparative contribution.

8 39. **AS AND FOR A TENTH, SEPARATE AND AFFIRMATIVE**
9 **DEFENSE**, this answering defendant alleges that the complaint is stated in vague and conclusory
10 terms and does not set forth sufficient facts to allow defendants to determine all potential
11 affirmative defenses. Defendant accordingly reserves the right to assert any additional defenses.

12 40. **AS AND FOR A ELEVENTH SEPARATE AND AFFIRMATIVE**
13 **DEFENSE**, this answering defendant alleges that plaintiff has failed to state a cause of action for
14 violation of the Unruh Civil Rights Act because plaintiff has failed to comply with Civil Code
15 section 51.

16 41. **AS AND FOR A TWELFTH SEPARATE AND AFFIRMATIVE**
17 **DEFENSE**, this answering defendant alleges that defendant is not subject to the provisions of
18 the Unruh Civil Rights Act, Civil Code sections 51, et seq., for the conduct alleged in plaintiff's
19 complaint.

20 42. **AS AND FOR A THIRTEENTH SEPARATE AND AFFIRMATIVE**
21 **DEFENSE**, this answering defendant alleges that to the extent possible, defendants have had in
22 place at all times a plan for compliance with the American's with Disabilities Act of 1990
23 ("ADA"); that its plan is being continuously implemented; that continual progress towards full
24 compliance with the ADA is being made under the defendant's plan; and that defendant is in
25 substantial compliance with ADA.

26 43. **AS AND FOR A FOURTEENTH SEPARATE AND AFFIRMATIVE**
27 **DEFENSE**, this answering defendant alleges that the modifications set forth in plaintiff
28 complaint are not "reasonable modifications" in the policies, practices or procedures to the extent

1 necessary to afford foods, services, facilities privileges, advantages or accommodations to
 2 plaintiff because such modification would injure the financial operations and/or effectiveness of
 3 defendant's services and facility. (See, 42 U.S.C. §12.182.(b)(2)(A)(ii)(1994).)

4 **44. AS AND FOR A FIFTEENTH SEPARATE AND AFFIRMATIVE**
 5 **DEFENSE**, this answering defendant alleges that plaintiff lacks standing to assert a claim under
 6 the ADA because plaintiff has not suffered a threatened or actual distinct and palpable injury,
 7 there is no causal connection between the injury and defendant's challenged conduct, and/or
 8 there is no substantial likelihood that the relief sought by plaintiff will prevent or redress the
 9 injury.

10 **45. AS AND FOR A SIXTEENTH SEPARATE AND AFFIRMATIVE**
 11 **DEFENSE**, this answering defendant alleges that it or other third parties (i.e., tenant, landlord,
 12 etc.) provide persons with disabilities alternatives to barrier removal by alternative methods such
 13 as customer services.

14 **46. AS AND FOR A SEVENTEENTH SEPARATE AND**
 15 **AFFIRMATIVE DEFENSE**, this answering defendant alleges that defendant was privileged
 16 and/or justified for the alleged conduct, if any, because the alleged barriers were isolated and/or
 17 temporary interruptions in services or access due to maintenance and/or repairs.

18 **47. AS AND FOR A EIGHTEENTH SEPARATE AND AFFIRMATIVE**
 19 **DEFENSE**, this answering defendant alleges that to the extent the defendant engaged in any of
 20 the conduct alleged in the complaint, it did so because the plaintiff poses a direct threat to its
 21 health or safety or the health or safety of other individuals.

22 **48. AS AND FOR A NINETEENTH SEPARATE AND AFFIRMATIVE**
 23 **DEFENSE**, this answering defendant alleges that plaintiff fails to set forth facts to constitute a
 24 basis for recovery of attorney's fees and costs. As to each cause of action alleged in the
 25 complaint, defendant alleges that plaintiff is not entitled to recovery attorney's fees pursuant to
 26 any state or federal statute.

27 **49. AS AND FOR A TWENTIETH SEPARATE AND AFFIRMATIVE**
 28 **DEFENSE**, this answering defendant alleges that the complaint is limited or subject to to an

1 absolute bar as to recoverable damages based on after-acquired evidence the defendant has
2 presently and/or may acquire during the course of this litigation.

3 50. AS AND FOR A TWENTY-FIRST SEPARATE AND
4 **AFFIRMATIVE DEFENSE**, this answering defendant alleges that plaintiff lacks standing to
5 assert a claim for denial of accessible sanitary facilities, if any, in violation of California Health
6 & Safety Code sections 19955, et seq. because there is no private right of action thereunder.

7 51. AS AND FOR A TWENTY-SECOND SEPARATE AND
8 **AFFIRMATIVE DEFENSE**, this answering defendant alleges on information or belief, that
9 the premises owned and/or leased by defendant was designed and/or constructed prior to January
10 26, 1993. (34 Code Fed.Reg. §§36.401(a)(2), 36.152.)

11 52. AS AND FOR A TWENTY-THIRD SEPARATE AND
12 **AFFIRMATIVE DEFENSE**, this answering defendant alleges that the premises owned and/or
13 leased by defendant was not altered or modified after January 26, 1993. (14 U.S.C. § 12183(a);
14 34 Code Fed. Regs. §36.402.)

15 53. AS AND FOR A TWENTY-FOURTH SEPARATE AND
16 **AFFIRMATIVE DEFENSE**, this answering defendant alleges that the premises owned and/or
17 leased by defendant was not altered or modified after July 1, 1997 (Cal. Health & Safety Code
18 §19959.)

19 54. AS AND FOR A TWENTY-FIFTH SEPARATE AND
20 **AFFIRMATIVE DEFENSE**, this answering defendant alleges that under the terms of its
21 contractual agreements, responsibility for compliance with all federal, state and local laws
22 regarding access and use of the premises by persons with disabilities has been allocated to third
23 person(s) (i.e. tenants, franchisee, etc.) who are solely responsible for any affirmative obligations
24 to make the premises accessible to persons with disabilities.

25 55. AS AND FOR A TWENTY-SIXTH SEPARATE AND
26 **AFFIRMATIVE DEFENSE**, this answering defendant alleges that defendant's activities with
27 respect to plaintiff, if any, were privileged or otherwise justified, as such activities were proper,
28 fair and legitimate business activities and/or related reasons and were neither arbitrary,

1 capricious, nor unlawful, but were undertaken to protect plaintiff's economic interest and/or
2 relations.

3 56. **AS AND FOR A TWENTY-SEVENTH SEPARATE AND**
4 **AFFIRMATIVE DEFENSE**, this answering defendant alleges that there has been no violation
5 of the Unruh Civil Rights Act because there is no law requiring construction, alternation, repair
6 or modification by another provision of law. (Cal. Civ. Code §51(d).)

7 57. **AS AND FOR A TWENTY-EIGHTH SEPARATE AND**
8 **AFFIRMATIVE DEFENSE**, this answering defendant alleges that removal of any alleged
9 structural barriers to access by persons with disabilities is not readily achievable or technically
10 feasible.

11 58. **AS AND FOR A TWENTY-NINTH SEPARATE AND**
12 **AFFIRMATIVE DEFENSE**, this answering defendant alleges that the provisions of the "Fair
13 Responsibility Act of 1986" (commonly known as Proposition 51, Civil Code §§ 1430 - 1432)
14 are applicable to this action to the extent that plaintiff's injuries and damages, if any, were
15 proximately caused and were contributed to by the carelessness, negligence or fault of persons or
16 entities other than this answering defendant.

17 59. **AS AND FOR A THIRTIETH SEPARATE AND AFFIRMATIVE**
18 **DEFENSE**, this answering defendant alleges that prior to commencement of this action,
19 defendant duly performed, satisfied and discharged all duties and obligations it may have owed to
20 the plaintiff arising out of any agreement, representations or contracts made by them or on behalf
21 of them and this action is therefore barred by the provisions of California Civil Code section
22 1473.

23 60. **AS AND FOR A THIRTY-FIRST SEPARATE AND AFFIRMATIVE**
24 **DEFENSE**, this answering defendant alleges that they have no ownership interest or control of
25 the subject property.

26 61. **AS AND FOR A THIRTY-SECOND SEPARATE AND**
27 **AFFIRMATIVE DEFENSE**, this answering defendant alleges that the subject property is
28 exempted from any and all requirements, guidelines, rules and regulations as alleged in plaintiff's

1 complaint.

2 62. **AS AND FOR A THIRTY-THIRD SEPARATE AND**
3 **AFFIRMATIVE DEFENSE**, this answering defendant alleges that if defendant is determined to
4 be the prevailing party in this action, defendant should be awarded reasonable attorney's fees and
5 costs pursuant to 42 U.S.C. §12205, California Code of Civil Procedure section 55 and
6 California Health and Safety Code section 19953.

7 63. **AS AND FOR A THIRTY-FOURTH SEPARATE AND**
8 **AFFIRMATIVE DEFENSE**, this answering defendant alleges that it presently has insufficient
9 knowledge or information on which to form a believe as to whether it may have additional as yet
10 unstated defenses available. Defendant reserves the right to assert additional defenses in the
11 event discovery indicates that they would be appropriate.

12 **WHEREFORE**, this answering defendant pray that plaintiff take nothing by the
13 complaint, that the complaint be dismissed with costs of suit incurred herein, that defendant be
14 awarded its reasonable attorney's fees and costs of suit and for such other and further relief as
15 this court may deem just and appropriate.

16 Dated: May 30, 2008

DRUMMOND & ASSOCIATES

/s/

By _____
Donald F. Drummond
Attorneys for Defendant Il Fornaio

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